

Before the  
Commission on Common Ownership Communities  
for Montgomery County, Maryland

In the Matter of  
Charles Wurz, Tenant  
William Heavey, Owner of  
4940 Bradley Boulevard  
Bethesda, Maryland  
Complainants  
  
Vs.  
  
Victor Sherlock, President  
Board of Directors  
Kenwood Forest II Condominium  
Respondent

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Case No. 158-R  
October 7, 1992

Decision and Order

The above entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5 (i), 10B-9 (a), 10B-10, 10B-11 (e), 10B-12, and 10B-13 of the Montgomery County Code, 1984, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 7th day of October, 1992, found, determined and ordered as follows:

On March 5, 1992, Charles Wurz, tenant of 4940 Bradley Boulevard, Bethesda, Maryland, hereinafter the Complainant, filed a formal dispute with the Office of Common Ownership Communities. On April 16, 1992, William F. Heavey, Jr., owner of 4940 Bradley Boulevard, Bethesda, Maryland, hereinafter the Complainant, joined as a party to the dispute by filing a formal dispute with the Office of Common Ownership Communities. The Complainants alleged that Kenwood Forest II Condominium Board of Directors inconsistently enforced restrictions against pets throughout the Community and that the Complainants were thereby relieved from compliance with the Board of Director's determination that they were in violation of Article IX, Section 3(e) of the By-laws.

The Respondent Board maintained that the Complainants were in violation of Article IX, Section 3(e) of the Community's Bylaws inasmuch as Complainant Wurz's dog weighed more than the twenty (20) pound weight restriction. The Respondent Board additionally maintained that it had the authority to require the removal of Complainant Wurz's dog, and to impose daily fines against Complainant Heavey for each day he failed to have the dog removed from the unit.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e). On June 3, 1992, the Commission voted to hold a public hearing, which commenced and concluded on September 9, 1992.

FINDINGS OF FACT

Based on the testimony and evidence of record, the Commission makes the following findings:

1. Complainant William F. Heavey, Jr. is the owner of 4940 Bradley Boulevard, Chevy Chase, Maryland 20815. The dwelling unit is located in Kenwood Forest II Condominium.
2. Complainant Charles Wurz occupied 4940 Bradley Boulevard, Chevy Chase, Maryland, as a tenant, from September, 1990, through August, 1992.

3. During October, 1991, Complainant Wurz purchased a dog, which resided with him at 4940 Bradley Boulevard, until June 27, 1992. The dog was found by the Board to weigh more than 20 pounds.
4. By correspondence dated December 5, 1991, the resident owner of 6719 Hillendale Road complained to the Respondent Board's agent about the dog that resided above her in 4940 Bradley Boulevard. The complaint alleged that the dog weighed in excess of 20 pounds and was causing damage within her unit by its constant jumping activity.
5. By correspondence dated December 5, 1991, Complainant Wurz was put on notice by the Respondent Board's agent that a complaint had been received, alleging that his dog exceeded the twenty (20) pound weight limit and was running and jumping causing items to fall off the walls in the unit below, and that the dog was not registered with the Board. The correspondence directed Complainant Wurz to remove the dog from the property within ten (10) days.
6. By correspondence dated December 9, 1991, Complainant Wurz notified the Respondent Board's agent that he owned a dog, but that it was not causing any disturbance to other residents. Complainant Wurz requested that the Board conduct a hearing to resolve the matter.
7. By correspondence dated January 14, 1992, the Respondent Board notified unit owner Complainant Heavey that he was in violation of Article IX, Section 3(e) of the Condominium Bylaws by allowing on the premises an unregistered dog weighing in excess of twenty pounds. By the same January 14, 1992, correspondence, Complainant Heavey was directed to abate the violation by removing the dog from the property or be subject to the assessment of daily fines for violation of the By-laws.
8. On February 12, 1992, The Respondent Board conducted a hearing with regard to Complainant Wurz's dog and found that Complainant Wurz was in violation of Article IX, Section 3(e) of the Condominium Bylaws by housing a dog which exceeded twenty (20) pounds in weight. Furthermore, the Respondent Board voted to impose the following sanction for the violation against Complainant Heavey: a fine of \$5 per day, commencing March 3, 1992, unless prior to that time he supplied the Respondent Board with evidence that he and Complainant Wurz had come into compliance with Article IX, Section 3(e) of the Condominium Bylaws by removing the dog from the property, and furthermore, if compliance was not achieved by April 2, 1992, the fine was to be increased to \$10 per day, and would continue to accrue until the violation was cured.
9. By correspondence dated February 14, 1992, Complainant Heavey was notified of the Board's findings and the sanctions. A copy of this letter was sent to Complainant Wurz.
10. No fines have been imposed against unit renter Complainant Wurz.
11. Neighboring unit owners Barbara and Craig Sable, 4938 Bradley Boulevard, Chevy Chase, Maryland, purchased a dog during November, 1991. The dog continues to reside with the Sables and the dog weighs more than 20 pounds.

12. By correspondence dated November 27, 1991, the resident of 6717 Hillandale Road registered a complaint with the Respondent Board alleging that Barbara and Craig Sable, owners of 4938 Bradley Boulevard, an adjacent dwelling unit, had purchased a dog that was the source of noise disturbances.
13. By correspondence dated December 2, 1991, the Respondent Board's agent notified Barbara and Craig Sable that two (2) complaints had been received regarding the behavior of their dog and they were directed to register their dog with the Board including the breed, mature weight and name of the dog. Further, the Sables were directed to abate the noise problem and advised that in the event further complaints were received, the Board had the right to request that the dog be removed from the property and fines could be imposed.
14. By a memorandum dated December 2, 1991, the Respondent Board's agent replied to the resident of 6717 Hillandale Road, noting that the Sables had been given until December 11, 1991, to register their dog and noting that the breed of the dog would indicate if the weight restriction would be violated, and that she would address that problem, if necessary. Ms. Broadwater requested that the Sables be given an opportunity to correct the noise problem and instructed the resident of 6717 Hillandale Road to report back to her if the problem was not cured. She stated that if the disturbances continued, she would write a more formal letter and that the Board would take further action to decide if it would impose fines or direct that the dog be removed from the property.
15. By a memorandum dated December 3, 1991, the Respondent Board's agent notified the resident of 6717 Hillandale Road that the Sables were taking actions to correct the noise disturbances and had requested a reasonable length of time to work with the dog. Ms. Broadwater stated that she did not know what the mature weight of the dog would be and that the weight may become another issue. She suggested that the unit owner keep her informed if further action was necessary. Ms. Broadwater testified that she was not asked by the resident of 6717 Hillandale Road to take further action.
16. The Sables' dog weighs in excess of 20 pounds.
17. The Board of Directors has not requested that the Sables remove their dog from their property and has not imposed fines against the Sables.
18. In his formal dispute filed with the Office of Common Ownership Communities on March 5, 1992, Complainant Wurz specifically alleged that the Sables were in violation of Article IX, Section 3(e) of the Condominium Bylaws by housing a dog that weighed more than twenty pounds, but he never filed a written complaint with the Board of Directors.
19. The Office of Common Ownership Communities provided the Respondent Board with a copy of Complainant Wurz's formal dispute as an attachment to a letter dated March 20, 1992.
20. Respondent's Exhibit No. 6 contains documents which demonstrate a consistent pattern of enforcement of Article IX, Section 3(e) of the Condominium Bylaws by the Respondent Board.
21. The Respondent's policy was to enforce violations of Article IX, Section 3(e) of the Bylaws only upon receipt of written complaints.
22. The Board of Directors had documented consistent investigation and enforcement of alleged violations of Article IX, Section 3(e) of its Bylaws prior to November 27, 1991.

CONCLUSIONS OF LAW

Accordingly, the Commission concludes based upon a preponderance of the evidence, including but not limited to testimony and documents admitted into evidence, and after a full and fair consideration of the evidence of record, that:

1. Complainants Heavey and Wurz violated Article IX, Section 3(e) of the Condominium Bylaws by having a dog weighing in excess of twenty pounds on the premises at 4940 Bradley Boulevard from March 3, 1992, through June 27, 1992.
2. The Respondent Board received notice on November 27, 1991, that Complainant Wurz was housing a dog that may have exceeded the twenty pound weight restriction.
3. The Respondent Board failed to fully investigate complaints received November 27, 1991, and March 20, 1992, and schedule hearings to determine if a violation of Article IX, Section 3(e) of the Bylaws was occurring.
4. The Respondent Board's failure to fully investigate the aforementioned complaints and subsequent failure to enforce Article IX, Section 3(e) of the Condominium Bylaws against the owners and residents of 4938 Bradley Boulevard, Chevy Chase, Maryland, constitutes an inconsistency in its enforcement procedures.
5. The Respondent Board did not engage in a pattern and practice of failure to consistently and uniformly enforce Article IX, Section 3(e) of the Condominium Bylaws.
6. The Respondent Board acted within its statutory authority regarding the enforcement of Article IX, Section 3(e) of the Condominium Bylaws against the Complainants by requiring Complainant Wurz to remove his dog from the premises and by imposing fines against Complainant Heavey.
7. The fines assessed against Complainant Heavey are reasonable.

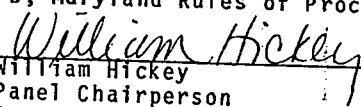
ORDER

In view of the foregoing, and based on the evidence of record, the Commission orders that:

1. The Respondent Board shall consistently investigate and enforce Article IX, Section 3(e) of the Condominium Bylaws when it receives written or other forms of actual notice of alleged violations of the Bylaws.
2. Complainant William F. Heavey, Jr. pay the fines imposed by the Respondent Board, for the period March 3, 1992, through June 27, 1992, in the full amount of \$1,020.00, within thirty (30) days of the date of this Order.

The foregoing was concurred in by panel members Gordon, Sullivan and Hickey.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to Chapter 1100, Subtitle B, Maryland Rules of Procedure.

  
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William Hickey  
Panel Chairperson  
Commission on Common Ownership  
Communities